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Summary record of the 122nd meeting
Held at the Palais Wilson, Geneva, on Tuesday, 3 February 2015, at 3 p.m.

Chairperson: Mr. Decaux

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The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Armenia (CED/C/ARM/1 and CED/C/ARM/Q/1)

1. *At the invitation of the Chairperson, the delegation of Armenia took places at the Committee table.*

2. **Mr. Poghosyan** (Armenia), introducing the initial report of Armenia (CED/C/ARM/1), said that, since the beginning of its journey towards independent statehood, Armenia had opted for the establishment of a democratic society based on the rule of law. Armenia had signed a number of international instruments, including several core human rights treaties. Since its first review under the universal periodic review process, Armenia had made significant progress in giving effect to its human rights obligations by enacting numerous laws, embarking on reform in different areas and adopting a series of national action plans.

3. The initial report of Armenia to the Committee on Enforced Disappearances had been prepared by the Police of the Republic of Armenia. Relevant stakeholders, including governmental institutions and the Office of the Human Rights Defender of Armenia, had had the opportunity to contribute comments. The report had been made public for further consultation by civil society before its finalization and submission to the Committee in October 2013.

4. No cases of enforced disappearance had been registered in Armenia. Although enforced disappearance was not defined as a separate offence in the Criminal Code, certain provisions of the Constitution, the Criminal Code and the Code of Criminal Procedure contained elements of the definition of enforced disappearance. Moreover, the Constitution and national law provided for the direct application within Armenian territory of the international treaties to which Armenia was a party, which meant that individuals and other relevant stakeholders could invoke their provisions directly.

5. The wording of the article on enforced disappearance that was proposed for inclusion in the Criminal Code was fully in line with the definition set out in the International Convention for the Protection of All Persons from Enforced Disappearance and had been published on the official website of the national police for the purposes of public scrutiny. A second draft article prescribed sanctions for acts of enforced disappearance of a widespread or systematic nature; following adoption, it would be inserted into section 33 of the Code under the heading of crimes against humanity and peace.

6. **Ms. Janina** said that she would like to know whether, during the preparation of the report, the State party had engaged in broad-based consultations with civil society, as was encouraged in the reporting guidelines prepared by the Committee. She asked how Armenian citizens could exercise their constitutional right to apply to international bodies for the protection of their human rights if the State party had not recognized the Committee's competence to receive and consider individual communications. Was the State party considering making the declarations on competence provided for in articles 31 and 32 of the Convention? She would appreciate an explanation of how the Convention was directly applied by the Armenian courts.

7. In relation to paragraph 29 of the report, she requested detailed information on the legal or other measures in force to ensure that the prohibition against enforced disappearance could not be abrogated or restricted under any exceptional circumstances, including external or internal states of emergency. In the context of states of emergency or other exceptional circumstances, did national law provide for derogation from any other

rights provided for in national legislation in compliance with international human rights instruments to which Armenia was a party and which might be relevant for taking action against enforced disappearances? If that was the case, the delegation should enumerate the rights or procedural safeguards that could be derogated from, under which circumstances, according to which legal provisions and for how long.

8. Given that enforced disappearance was not defined as a separate offence in the Criminal Code, she asked whether the common elements of that offence that were contained in chapters 17 and 33 of the Code carried penalties that were commensurate with the gravity of the offence of enforced disappearance. She would be interested to know the current status of the draft amendments to the Code that defined enforced disappearance as a separate offence; how the amendments would be given effect following their adoption; and whether the State party's position that the placement of a person outside the protection of the law was a binding element of the definition of enforced disappearance would be reproduced in the draft amendment. She asked whether the draft amendments to the Code would include a definition of enforced disappearance as a crime against humanity and, if so, on what elements it would be based and to what extent it would comply with article 5 of the Convention.

9. She said she would like to receive additional information on how the State party prohibited and prosecuted the acts defined in article 2 of the Convention when committed by persons or groups acting without the authorization, support or acquiescence of the State. She enquired as to whether the State party had made any progress in terms of becoming a signatory to the Rome Statute and whether it had identified any challenges in doing so.

10. With reference to paragraph 56 of the report, she requested an explanation as to how article 47 of the Criminal Code was consistent with article 6 of the Convention. She asked whether there would be a review of that provision, which allowed for the invocation of any order or instruction from any public authority in order to justify a crime. She would appreciate receiving more precise information on the difference between grave and extremely grave offences and the penalties prescribed for each. She asked whether the penalty laid down in the draft amendments to the Code provided for mitigating and aggravating circumstances in the context of enforced disappearance. She requested further clarification of the difference between a continuous and a continuing crime. Which one applied to the crime of enforced disappearance? She enquired as to whether the draft amendments to the Code provided for a statute of limitations. She would like for the delegation to elaborate on the statement made in paragraph 71 of the report to the effect that the issue of the application of the statute of limitations with regard to a person who had committed a criminal offence that was punishable by life imprisonment would be settled by the court. By means of what procedure did Armenian courts arrive at such a decision?

11. **Mr. Camara** asked whether, in the event that an international treaty contradicted the Constitution and could therefore not be ratified, as noted in paragraph 12 of the report, the Constitution could be amended to allow the ratification or whether there were other solutions to that problem.

12. With regard to the competence of the national courts to hear cases of foreign nationals and stateless persons not permanently residing in Armenia who had committed a criminal offence outside Armenian territory, he asked whether the two conditions listed in paragraph 77 of the report were cumulative or if only one had to be met in order for Armenian courts to prosecute such persons. As to the competence of the Armenian authorities to arrest a person residing in Armenia who was suspected of having committed a crime in the territory of a foreign State with which Armenia had an agreement for the provision of legal assistance in criminal matters, he wished to know what happened when Armenia did not have such an agreement with the foreign State, particularly in cases where the person was suspected of having committed the crime of enforced disappearance. He

asked whether the Code of Criminal Procedure prescribed legislative, regulatory or administrative measures that would enable the Armenian courts to immediately open an investigation if a person suspected of having committed an act of enforced disappearance was found on Armenian territory. He enquired as to whether there were any provisions or mechanisms to ensure that, in cases of enforced disappearance, suspects could not influence the corresponding investigation, particularly if the suspects were members of the police or the armed forces.

13. With regard to the question of extradition, he asked what happened in cases where the extradition of a person suspected of having committed an act of enforced disappearance was requested by a State with which Armenia did not have an extradition treaty. Could extradition be denied by Armenia on grounds of diplomatic or other immunity? Given that Armenia could deny extradition if the requested person was likely to be prosecuted in the requesting State on the grounds of his or her political beliefs, race or religion, he wondered whether extradition could be denied in the case of enforced disappearance. If that was the case, that policy ran contrary to article 13 of the Convention, which stated that, for the purposes of extradition, the crime of enforced disappearance could not be regarded as a political offence or as an offence inspired by political motives. He asked whether there had been cases in which the Convention or another international agreement had served as the basis for an extradition in the absence of an agreement between Armenia and the requesting State.

14. He enquired as to whether the agreements for mutual assistance in criminal matters described in paragraph 120 of the report were consistent with the Convention, particularly concerning the prosecution and extradition of alleged offenders found on Armenian territory and concerning the provision of assistance to victims.

15. **Mr. López Ortega** asked for information on the role played by the Prosecutor General's Office and the judiciary in criminal investigations and, in particular, whether those bodies oversaw investigations conducted by the National Security Service and the police, including investigations into alleged cases of enforced disappearance. He requested details concerning the position of the National Security Service and the police in the government hierarchy, namely, whether they were attached to the executive branch or whether they had organizational autonomy. He wished to know in which circumstances commanders of military units could conduct investigations, which crimes they could investigate, which body had competence to oversee their investigations and whether those commanders were combat personnel or military staff with legal backgrounds. If they were staff with legal backgrounds, he wished to know the level of their organizational independence. He also wished to know whether the courts that heard cases that had been investigated by military commanders were lower courts and whether they were single-judge or collegiate courts. If they were collegiate courts, were they composed solely of professional judges or a mixture of professional and lay judges? Lastly, what guarantees were there in the State party to ensure the independence of the judiciary?

16. **Mr. Al-Obaidi** said that he would appreciate clarification concerning the information provided in paragraph 53 of the report, which indicated that, in the cases provided for in articles 34 and 35 of the Criminal Code, a person could be held responsible for an attempted offence or for the preparation of an offence. He asked how the State party envisaged investigating the intention to commit a crime of enforced disappearance. It was unclear how such investigations could lead to the suspect's arrest, given that, in some cases, an act of enforced disappearance could begin with a legitimate act.

17. **Mr. Corcuera Cabezut** asked whether the Constitutional Court had ruled on the compatibility of the Convention with the Armenian Constitution. He wished to know whether any changes had been made to the wording of the draft amendment to the Criminal Code, which contained a definition of enforced disappearance and was set out in the annex

to the replies to the list of issues that had been circulated informally. If changes had been made to the definition subsequently, he would be interested to know what they were. He asked for clarification regarding the discrepancy between what was stated in paragraph 32 of report and the text of the draft amendment as set out in the annex. In the former, one of the binding elements of an act of enforced disappearance was the placement of the person outside the protection of the law, whereas, in the latter, such placement was a consequence of the crime of enforced disappearance.

18. Although the State party could not provide examples of cases of enforced disappearance in which the provisions of the Convention had been invoked directly in Armenia, owing to the lack of such cases, he asked whether other provisions of the Convention, such as those providing for a range of preventive measures, had been directly invoked by the courts.

19. **Mr. Yakushiji** said that he would welcome clarification on the difference between a continuous crime and a continuing crime. Based on the State party's written replies to the list of issues, it appeared that the crime of enforced disappearance continued until the perpetrator had been captured or had surrendered. If so, when did the statute of limitations begin to run? Also, if the punishment imposed on a perpetrator could not be more severe than the punishment that would have been handed down in the country where the offence had been committed, that might undermine the State party's obligations under article 7, paragraph 1, of the Convention. For example, if a perpetrator who had committed a crime in a country that had not ratified the Convention were discovered in Armenia and not extradited, how would the State party fulfil its obligation to extradite or prosecute? He also asked whether members of the military were included in the bodies envisaged in article 190 of the Code of Criminal Procedure. Finally, he asked whether extradition was conditional on the existence of an extradition treaty with the country concerned. If so, with how many countries had Armenia concluded such treaties?

The meeting was suspended at 3.55 p.m. and resumed at 4.25 p.m.

20. **Ms. Melikyan** (Armenia), referring to articles 31 and 32 of the Convention, said that the State party was considering declaring that it recognized the competence of the Committee to receive and consider communications and that a declaration would be submitted to the parliament for adoption. In response to an earlier question, she said that the Constitution established that all persons had the right to apply to international bodies for the protection of their rights and freedoms. Armenia had already recognized various individual complaint procedures, and persons could apply to, inter alia, the European Court of Human Rights for the protection of their rights.

21. As to the place of treaties in the national legal system, the Constitution provided that international treaties, once ratified, were an integral part of the Armenian legal system and were directly applicable. In other words, courts, institutions and individuals could refer to the provisions of international treaties, including those of the Convention, even if those provisions had not been incorporated into national legislation.

22. Armenia had signed the Rome Statute in 1998, but had suspended the ratification process when the Constitutional Court had found that some of its provisions were inconsistent with the Constitution. The State party was currently in the process of amending its Constitution, and the concept paper on the constitutional reforms, which had already been made public, stated that the reforms must create preconditions for the ratification of the Rome Statute. International treaties were directly applicable provided that their provisions were not incompatible with those of the Constitution. The draft amendment to the Criminal Code that was annexed to the State party's written replies had already been reviewed by the Constitutional Court.

23. Referring to a question from Mr. Camara, she said that the State party could not commit to including provisions of the Convention in its draft treaties as the other parties to those treaties would have to agree to the text. Armenia had concluded 12 bilateral agreements on mutual legal assistance in criminal and civil matters and had ratified 6 multilateral conventions. It had also entered into nine bilateral and three multilateral extradition treaties.

24. **Mr. Tumanov** (Armenia) said that chapter 54 of the Code of Criminal Procedure regulated legal assistance in criminal matters in accordance with international agreements. Article 492 of the Code stated that a person could be arrested if he or she was suspected of having committed an offence in a country with which Armenia had signed an agreement on mutual legal assistance in criminal matters. In such cases, the person would be extradited to the other country at the request of the competent authority. Chapter 54 of the Code regulated legal assistance in criminal matters in the absence of such agreements; in exceptional cases, arrangements for the execution of a foreign judgement in Armenia could be made through diplomatic channels. The Code did not, however, include a detailed procedure for that, and the State party had never invoked that provision. The State party had never received any requests for extradition in association with a case of enforced disappearance.

25. **Ms. Avoyan** (Armenia), in response to questions that had been raised by Ms. Janina, said that there was a website on which draft versions of legislation and reports were posted for public consultation. In principle, suggestions or comments could lead to further discussion and even amendment of the texts. As the draft version of the State party's report had not elicited any response from civil society, it had been forwarded directly to the relevant State bodies and the Office of the Human Rights Defender.

26. Replying to questions that had been raised by Mr. Corcuera Cabezut, she said that the draft amendment to the Criminal Code was currently being discussed by the relevant State bodies and had been posted online for public consultation. The text annexed to the written replies to the list of issues was the current version. The definition of enforced disappearance that appeared in that version referred to the placement of a person outside the protection of the law as a result of an act of enforced disappearance.

27. A continuous crime was a criminal offence that was still in progress and had not yet ended, whereas a continuing crime referred to a series of acts that were interconnected and related to the same criminal intent. Enforced disappearance was considered a continuous crime unless the crime had ended, for example, if the perpetrator had been found or had died. In such cases, the statute of limitations began to run on the date the crime had ended.

28. The Criminal Code established different punishments for grave and extremely grave offences. Punishment for grave offences could not exceed 10 years' imprisonment, whereas extremely grave offences were punishable by more than 10 years' imprisonment or life imprisonment. The draft amendment to the Code defined an act of enforced disappearance as a grave offence, unless it had been committed under aggravating circumstances, in which case it was considered an extremely grave offence. Cases of systematic enforced disappearance, for instance, constituted an extremely grave offence. Other provisions of the Code applied to acts of enforced disappearance that had been committed by persons who did not hold a State position or had not acted with the authorization, support or acquiescence of the State.

29. In response to a question regarding the direct application of the provisions of the Convention by the Armenian courts, she said that an offence was subject to punishment only if it was included in the Criminal Code.

30. **Mr. Abgaryan** (Armenia), in reference to a question regarding the non-derogability of the Convention, said that article 16 of the Constitution guaranteed the right to liberty and

that persons could be deprived of their liberty only as prescribed by law. Therefore, given that acts of enforced disappearance deprived persons of their liberty and were not prescribed by law, they were already prohibited under the Constitution, which had primacy over all other laws and was applied directly. Referring to another question, he said that the legislation pertaining to a state of emergency or war did not establish exceptions regarding the deprivation of liberty.

31. Turning to the question of whether investigations into enforced disappearance were carried out by the military authorities, he said that military personnel conducted only preliminary inquiries and solely in respect of offences committed on military territory or involving fixed-term military personnel. Subsequent investigations were handled by other authorities, including the State security service, which had particular responsibility for investigating cases of enforced disappearance. Under proposed legislation, State security investigators would also be responsible for preliminary investigations currently conducted by the military.

32. Under current legislative arrangements, cases of enforced disappearance committed by persons other than State officials were dealt with under various articles of the Criminal Code, in particular articles 131 and 133, which related to abduction and illegal deprivation of liberty respectively.

33. As to whether a State body could be excluded from an investigation into a case of enforced disappearance allegedly committed by a member of that body, he said that, should such a situation arise, investigative responsibility would be transferred from the special investigative service — the body usually responsible for such matters — to the State security service.

34. With regard to the question of whether it was possible to arrest a person suspected of intending to commit a crime of enforced disappearance, he said that a person could be detained when there was reasonable cause to believe that he or she was preparing to commit such an offence or there was sufficient evidence to bring charges against the individual concerned.

35. In cases of enforced disappearance committed by foreign nationals or stateless persons, those persons could be held criminally responsible for offences committed on the territory of Armenia or on board a ship or aircraft registered in Armenia.

36. **Mr. Camara** said that the lack of a specific criminal offence of enforced disappearance in the State party's legislation raised two key issues: the range of penalties available to the courts and the duration of the statute of limitations. As to penalties, it was his understanding that under the Armenian Criminal Code enforced disappearance could in some instances be assimilated to an offence constituting a grave offence punishable by a prison term of from 2 to 5 years. Such penalties were clearly not in line with either the spirit or the letter of article 7 of the Convention, which required States parties to provide appropriate penalties that took into account the extreme seriousness of the offence of enforced disappearance. He encouraged the State party to ensure that the penalties provided for the crime of enforced disappearance in future legislation were in full accordance with the Convention.

37. With regard to the statute of limitations, he said that the current situation, under which the period applicable was either 10 or 15 years depending on the classification of the offence in question, was unsatisfactory and should be remedied. He recalled that, under article 8 of the Convention, States parties were required to ensure that the term of limitation was of long duration and proportionate to the seriousness of the offence of enforced disappearance.

38. He said that he would like to know whether the Office of the Human Rights Defender was an independent body and whether its head was elected or appointed.

39. **Ms. Janina** said that she would appreciate replies to her earlier questions regarding the compliance of the Criminal Code with article 6 of the Convention and the powers of courts to decide on issues relating to the application of the statute of limitations in respect of certain offences.

40. She welcomed the willingness of the State party to move forward with making the declarations provided for in articles 31 and 32 of the Convention concerning the competence of the Committee to receive and consider individual and inter-State communications. She stressed that by making those declarations the Government would be able to give full effect to individual rights enshrined in the Constitution.

41. In view of the lack of comments on the State party's report from civil society organizations, she said that the Government should consider ways of raising public awareness of the Convention and of encouraging greater involvement by civil society in the preparation of future reports.

42. With regard to the draft law supplementing the Criminal Code, she urged the State party to make every effort to ensure that the text would be interpreted as meaning that the placing of a person outside the protection of the law was a consequence of the offence of enforced disappearance, not a constitutive element thereof.

43. **Mr. Huhle**, noting the delegation's assertion that there had been no cases of enforced disappearance registered in the State party, asked how the Government went about collecting information in that regard and, in particular, whether it consulted the Office of the Human Rights Defender and unofficial bodies.

44. **Mr. Corcuera Cabezut**, noting that the delegation had stated that the death of the perpetrator of an offence of enforced disappearance might result in the closure of the related investigation, said that it was important to bear in mind that an investigation should serve not only to establish responsibility and punish the guilty but also to ascertain the facts of a case. In that connection, he recalled article 24, paragraph 6, of the Convention, which required States parties to continue investigations until the fate of the disappeared person had been clarified. He would therefore like to know whether the authorities would continue to investigate a case of enforced disappearance in the event of the death of the suspect.

45. **Mr. Hazan** said that he would welcome further details on the special investigative service, in particular regarding the authority under which it operated, the organization of the service, the scope of its investigative powers and the training received by its staff.

46. **Mr. López Ortega** said that he would like to have further clarification regarding investigations into cases of enforced disappearance carried out by military authorities. In particular, he asked the delegation to explain what was understood by the terms "military territory" and "fixed-term military personnel". He would also like to have details regarding the exact nature and duration of such preliminary military investigations. Lastly, he asked whether those investigations were a prerequisite for an investigation by the State security service or whether the latter body could initiate an investigation ex officio.

47. **Mr. Al-Obaidi**, referring to the draft law supplementing the Criminal Code, said that the State party should give consideration to providing for specific procedures for investigating the offence of enforced disappearance.

The meeting rose at 5.55 p.m.